

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC.,  
PLATINUM MOTORS, INC.,  
MATTINGLY AUTO SALES, INC.,  
Individually, and on behalf  
of other members of the  
general public similarly  
situated,

Plaintiffs,

Docket No.

1:14-cv-01589-TWP-DKL

vs.

COX ENTERPRISES, INC.,  
COX AUTOMOTIVE, INC.,  
NEXTGEAR CAPITAL, INC. f/k/a  
DEALER SERVICES CORPORATION,  
successor by merger with  
Manheim Automotive Financial  
Services, Inc., and JOHN WICK,  
Defendants.

Class Action

The deposition upon oral examination of  
**ADAM GALEMA**, a witness produced and sworn before me,  
Paula A. Morgan, Notary Public in and for the County  
of Hamilton, State of Indiana, taken on the 30th day  
of November, 2017, in the offices of Bose, McKinney &  
Evans, 111 Monument Circle, Suite 2700, Indianapolis,  
Marion County, Indiana, pursuant to the Federal Rules  
of Civil Procedure. This deposition was taken on  
behalf of the Plaintiffs in the above-captioned  
matter.

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ALSO PRESENT:

Rick Wright - In-house counsel DSC

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1           A D A M G A L E M A, the witness herein, having  
2       been first duly sworn to tell the truth, the whole  
3       truth, and nothing but the truth, was examined and  
4       testified as follows:

5       EXAMINATION,

6           QUESTIONS BY MS. MURPHY:

7       Q    Good morning, Mr. Galema. I'm Kerry Murphy. I  
8       represent the plaintiffs, Red Barn Motors, Platinum  
9       Motors, and Mattingly Auto Sales, as well as the  
10      certified class in this action. Can you please state  
11      your name for the record.

12      A    Adam Galema.

13      Q    Okay. Just to go through a few general guidelines,  
14      if you don't understand a question, please let me  
15      know. If you need a break at any point, let me know.  
16      If you answer yes or no, please do it verbally, not  
17      by nodding or shaking your head. Also, wait for me  
18      to finish asking a question before you answer it.  
19      I'll do my best to wait for you to finish before I  
20      ask another question. And all of this will help our  
21      court reporter take down everything that is said  
22      during the deposition. Does that all make sense?

23      A    Yes.

24      Q    Okay. You understand that you're here to testify as  
25      a Rule 30(b)(6) witness of NextGear Capital, formerly

1 out. That it's all dealers who were parties to a  
2 floor plan agreement during those dates?

3 A That's right.

4 Q All right. And what you did in starting to compile a  
5 list of all class members was to pull a list of all  
6 dealers who floor planned a vehicle, correct?

7 A That's correct.

8 Q Okay. And does that include every dealer who had a  
9 floor plan agreement with NextGear during those  
10 dates?

11 A Not necessarily.

12 Q Okay. Why did NextGear pull a list of dealers with  
13 transactions during certain dates rather than a list  
14 of dealers with contracts during certain dates?

15 A The dealers who would fit into that exclusion, if you  
16 will, are dealers who never transacted with NextGear.  
17 So they never floor planned a car, would have never  
18 done business with NextGear, and so, therefore, would  
19 have no basis for any claims under the current class  
20 action.

21 Q Is it possible that someone could have signed a  
22 contract with NextGear during the 2005 to 2013 time  
23 frame but not have a transaction with NextGear until  
24 sometime after July 31, 2013?

25 A It's possible, but they would have also signed a

1 records?

2 A There was a team of 15 or so people from various --  
3 you know, lending or legal that performed a manual  
4 search of all the files.

5 Q Okay. And when you refer to a manual review, what do  
6 you mean by that?

7 A They literally went into the system for each dealer  
8 and determined whether or not they signed a new  
9 NextGear note.

10 Q And did they determine that by looking at the entry  
11 for each dealer and the date in the contract field  
12 or --

13 A No. Sorry. No, they looked at the contract to  
14 determine which contract was signed.

15 Q Why did they not look at the contract dates in the  
16 Discover system?

17 A Because the date -- the contract date is, again, not  
18 necessarily the date that the contract was signed.  
19 It's really not an accurate date to use, especially  
20 in a search, you know, parameters, because it can  
21 be -- there's a lot of variation there, and so you  
22 would not -- you'd be missing quite a few dealers by  
23 using and relying on that date.

24 Q Do you believe that your initial list of 29,000  
25 dealers represented a complete list of all dealers

1           who signed a contract or who were party to a contract  
2           between January 1, 2005, and July 31, 2013?

3       A    It is possible that there are dealers that signed a  
4           DSC contract and never floor planned a vehicle.

5       Q    How many dealers would you say fall into that  
6           category of the twenty -- in addition to the 29,000?  
7           How many dealers may be excluded for that reason?

8       A    I would have no idea. It would be a pure guess.

9       Q    Who would know how many dealers were excluded from  
10          that initial list because they never had a  
11          transaction with NextGear?

12      A    Nobody would know that. That would require a  
13          significant manual review of the entire system to  
14          determine that.

15      Q    How many dealers are in NextGear's system who --  
16          sorry. Scratch that.

17               How many records, dealer records, would have to  
18          be reviewed to identify every class member or every  
19          dealer who signed a contract between 2005 and  
20          July 31, 2013?

21      A    Approximately 30,000.

22      Q    Okay.

23      A    Because there were 29,000 that actually floor planned  
24          a vehicle during that time frame.

25      Q    And that's all of the dealers who are in NextGear 's

1 system between January 1, 2005, and July 31, 2013,  
2 and excluding dealers who never signed contracts,  
3 correct?

4 A You could do that, yes.

5 Q And that list could potentially include dealers who  
6 signed contracts and did not -- during the applicable  
7 time period and did not have a transaction during the  
8 applicable time period and, thus, were not included  
9 on the original list created by NextGear, correct?

10 A That sort of search would produce many more dealers  
11 than what was originally produced in our search, yes.

12 Q How many more dealers do you think that search would  
13 include?

14 A I have no idea. I mean, thousands.

15 Q Why do you say "thousands"?

16 A There's tens of thousands of dealers in our system,  
17 so there have to be -- I mean, just take the  
18 percentages, I guess.

19 Q But you're still looking at only the body of dealers  
20 who did business with NextGear between 2005 and 2013,  
21 correct?

22 A Correct.

23 Q Okay. Do you believe that the initial list that you  
24 created of dealers who had transactions between  
25 January 1, 2005, and July 31, 2013, is the most



1 accurate list of all dealers who signed contracts  
2 between those dates that could be created by  
3 NextGear?

4 A Yes, I do.

5 Q Even though it excludes potentially class -- or  
6 dealers who signed contracts during those dates but  
7 did not do any transactions during those dates?

8 MR. VINK: Objection. Asked and answered. You  
9 can answer one more time, and then we're going to  
10 move on.

11 A It is the most accurate list because it's the most  
12 accurate data point, date field. The transaction  
13 date is the transaction date. The other dates that  
14 we've been talking about have a lot of variation.  
15 They have a lot of potential for lag time, et cetera.  
16 That would not be an accurate representation, then,  
17 of when a dealer signed a contract, et cetera, and  
18 would require manual effort for no reason.

19 Q After that initial search was run to create the list  
20 of 30,000 dealers who had transactions during 2005 to  
21 2013, how was that list verified to make sure that it  
22 was complete, at least as far as dealers who had  
23 transactions during that time frame?

24 A I'm not sure that there was necessarily a  
25 verification step. I mean, it's a search on the